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No. 04-1544

In the Supreme Court of the United States

VICKIE LYNN MARSHALL, PETITIONER

v.

E. PIERCE MARSHALL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether a claim that falls within the scope of the jurisdiction conferred upon the federal courts and that seeks neither to probate a will nor to administer or assume control over the property in a decedent's estate is nevertheless excepted from federal jurisdiction if it involves the adjudication of rights related to property that is the subject of an ongoing state probate proceeding.

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INTEREST OF THE UNITED STATES

The decision below adopts an expansive view of the so-called "probate exception" to federal jurisdiction, holding that "all federal courts * * * are required to refrain from deciding state law probate matters, no matter how the issue is framed by the parties." Pet. App. 2-3. In so holding, the court of appeals reasoned that state law can grant state probate courts sole jurisdiction over "all probate matters"—specifically including those "based on a theory of tax liability" or "debt"—to the exclusion of the courts of the United States. *Id.* at 34.

The United States has a substantial interest in the scope of any "probate exception" to federal jurisdiction. Congress has vested the federal courts with jurisdiction over all claims by (and many claims against) the United

States, including claims involving federal tax liability. See, *e.g.*, 28 U.S.C. 1340, 1345-1347, 1442, 1444, 2410. Pursuant to those jurisdictional grants, the United States files probate-related claims in federal court, such as claims regarding the tax liability of decedents' estates,[1] and removes to federal court probate-related claims brought against the United States in state court.[2] As a result, the scope of the so-called "probate exception" to federal jurisdiction has arisen, explicitly and implicitly, in cases involving the United States. See, *e.g.*, *Ashton* v. *Josephine Bay Paul & C. Michael Paul Found., Inc.*, 918 F.2d 1065, 1067-1068 (2d Cir. 1990); *Estate of Threefoot*, 316 F. Supp. 2d 636, 642-645 (W.D. Tenn. 2004). The United States therefore has a substantial interest in preserving its ability to have claims to which it is a party resolved in federal court as provided by Congress.

In addition, the United States Trustee Program, a component of the United States Department of Justice, has an interest in the efficiency and integrity of the federal bankruptcy system. Congress established the Program in the Bankruptcy Reform Act of 1978, 11 U.S.C. 101 *et seq.*, to further the public interest in the just,

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[1] See, *e.g.*, *United States* v. *Peoples Trust & Sav. Co.*, 97 F.2d 771 (7th Cir. 1938); *United States* v. *Estate of Slate*, 304 F. Supp. 380 (S.D. Tex. 1969), aff'd, 425 F.2d 1208 (5th Cir. 1970) (per curiam); *United States* v. *Acri*, 109 F. Supp. 943 (N.D. Ohio 1952), aff'd, 209 F.2d 258 (6th Cir. 1953) (per curiam), rev'd on other grounds, 348 U.S. 211 (1955).

[2] See, *e.g.*, *Ashton* v. *Josephine Bay Paul & C. Michael Paul Found., Inc.*, 918 F.2d 1065, 1067-1068 (2d Cir. 1990); *Estate of Johnson*, 836 F.2d 940 (5th Cir. 1988); *House* v. *United States*, 144 F.2d 555 (10th Cir.), cert. denied, 323 U.S. 781 (1944); *Estate of Threefoot*, 316 F. Supp. 2d 636, 642-645 (W.D. Tenn. 2004); *In re Palmer's Will*, 11 F. Supp. 301 (E.D. Okla. 1935).

speedy, and economical resolution of cases filed under the Bankruptcy Code. The Program monitors the conduct of bankruptcy parties and private estate trustees, oversees related administrative functions, and acts to ensure compliance with applicable laws and procedures. In the Program's view, recognition of a broad "probate exception" to the statutory jurisdiction of bankruptcy courts could interfere with the ability of the bankruptcy system to administer debtors' estates expeditiously, fairly, and efficiently for the benefit of creditors.

STATEMENT

1. J. Howard Marshall II (J. Howard) died on August 4, 1995, survived by two sons and petitioner, his third wife. Pet. App. 3, 11, 40. Respondent, one of J. Howard's sons, was the ultimate beneficiary of J. Howard's estate. *Id.* at 55. Respondent was also the primary beneficiary upon J. Howard's death of an inter vivos trust that J. Howard created in 1982, and J. Howard's last will and testament required the distribution of his probate property to the trust. *Id.* at 3-4.

Petitioner claims that during J. Howard's courtship of her, he promised to leave her half of his property if she would marry him, and that J. Howard's attorneys recommended the creation of a "catch-all" trust for her benefit. Petitioner further claims that respondent tortiously interfered with her expected inter vivos or post-mortem gift. Pet. App. 2, 4, 7 n.2.

2. After J. Howard's death, petitioner filed for bankruptcy under Chapter 11 of the Bankruptcy Code, 11 U.S.C. 1101 *et seq.*, in the United States District Court for the Central District of California. Pet. App. 12. Respondent filed a proof of claim for defamation against petitioner's bankruptcy estate, and sought a declaratory

ruling to prevent petitioner from obtaining a discharge in bankruptcy with respect to respondent's potential claim against her. *Ibid.* Petitioner counterclaimed against respondent for tortious interference with her expected gift. *Id.* at 12-13.

The bankruptcy court concluded that respondent had tortiously interfered with petitioner's expected gift. Pet. App. 201-221. The court awarded her compensatory damages of $449,754,134, less whatever she recovered in the ongoing probate action in Texas, together with punitive damages of $25 million. *Id.* at 199, 201-202, 221.

In a post-trial opinion, the bankruptcy court denied respondent's motion to dismiss for lack of subject matter jurisdiction, which asserted that petitioner's tortious interference claim could be tried only in the Texas probate proceeding. Pet. App. 190, 192-195. The bankruptcy court held that "the 'probate exception' argument was waived because it was not raised in a timely fashion." *Id.* at 190, 195. The court also observed, relying on *Markham* v. *Allen*, 326 U.S. 490 (1946), that a federal court has jurisdiction to "adjudicate rights in probate property, so long as its final judgment does not undertake to interfere with the state court's possession of the property." Pet. App. 194. Finally, the bankruptcy court concluded that petitioner's tortious interference claim, as a counterclaim to respondent's claim against the bankruptcy estate, was within the court's "core" jurisdiction under 28 U.S.C. 157(b)(2)(C), and thus that it had the authority to enter a final judgment. Pet. App. 196-199.

3. While the bankruptcy action was pending, petitioner and respondent (and others) were also engaged in litigation in the Texas probate court. Respondent sought a declaration that his father's will and the 1982

inter vivos trust were legally valid. Petitioner challenged the validity of the will and filed a tortious interference claim against respondent. Pet. App. 11.

After the bankruptcy court entered judgment for petitioner, she voluntarily dismissed all of her pending claims in the Texas probate proceedings. Pet. App. 17-18. She remained a party to those proceedings, however, as a defendant in the declaratory judgment action brought by respondent to establish the validity of J. Howard's will and the 1982 trust. *Id.* at 18. Following a jury trial of that action, the Texas probate court entered a final judgment upholding the validity of the decedent's will and the 1982 trust. *Id.* at 19. The court also determined that J. Howard did not intend to give petitioner a gift or bequest from his estate or the 1982 trust and that petitioner was not entitled to any distribution from the estate "by virtue of an agreement." *Id.* at 20-21.

4. Respondent appealed the judgment of the bankruptcy court to the district court, where he again urged that petitioner's claims were subject to dismissal under the "probate exception" to federal jurisdiction. Pet. App. 21, 157. The district court rejected the bankruptcy court's conclusion that respondent had waived the argument, but held that the "probate exception" was inapplicable. *Id.* at 158-170. The district court observed that petitioner's "counterclaim is asserted against [respondent] individually and makes no claim against the estate or even against the trusts existing at the time of J. Howard, Sr.'s death." *Id.* at 166. The district court concluded that, by exercising jurisdiction over that claim, "the bankruptcy court did not assert jurisdiction generally over the probate proceedings for J. Howard, Sr. or take control over his estate's assets." *Id.* at 162.

It further concluded that federal jurisdiction would not "interfere" with the probate proceedings because petitioner's counterclaim did not rest on an assertion that J. Howard's will was invalid and because the counterclaim was not within the exclusive jurisdiction of the Texas probate court. *Id.* at 163-170.

Although it affirmed the existence of federal subject matter jurisdiction, the district court held that petitioner's counterclaim for tortious interference was not part of the bankruptcy court's "core" jurisdiction. Pet. App. 173-187. As a result, the bankruptcy court lacked jurisdiction to enter a final judgment, and the district court reviewed petitioner's counterclaim de novo. *Id.* at 186-187; *id.* at 40; see 28 U.S.C. 157(c)(1). The district court found that respondent had tortiously interfered with petitioner's expectancies and awarded her compensatory damages of $44,292,767.33, plus punitive damages in the same amount. Pet. App. 132-136, 143, 147.[3]

5. The court of appeals reversed the district court's ruling that it had subject matter jurisdiction. Pet. App. 1-38. It held that all federal courts, including bankruptcy courts, are "bound by the probate exception to federal jurisdiction," regardless of the basis on which federal jurisdiction would otherwise exist. *Id.* at 2-3, 24-26.

The court of appeals recognized that petitioner's claim did "not involve the administration of an estate, the probate of a will, or any other purely probate mat-

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[3] Both the bankruptcy court and the district court found that J. Howard intended to give petitioner half the increase in value of his assets from the date of the marriage. See Pet. App. 137, 216. The district court, however, valued the increase as of the date of J. Howard's death, while the bankruptcy court valued it as of the date of trial. See *id.* at 7, 143, 219-220.

ter." Pet. App. 28. Nevertheless, the court held that the federal courts would be deprived of otherwise proper federal jurisdiction if petitioner's claim were "probate related," that is, if exercising jurisdiction would "(1) interfere with the probate proceedings; (2) assume general jurisdiction of the probate; or (3) assume control over property in custody of the state court." *Ibid.* (citing, *inter alia*, *Markham*, 326 U.S. at 494).

In the court of appeals' view, a claim satisfies that "probate related" test if it raises "questions which would ordinarily be decided by a probate court in determining the validity of the decedent's estate planning instrument," including fraud, undue influence and tortious interference with a testator's intent. Pet. App. 29. The court of appeals also stated that, "[w]here a state has relegated jurisdiction over probate matters to a special court and if that state's trial courts of general jurisdiction do not have jurisdiction to hear probate matters, then federal courts also lack jurisdiction over probate matters." *Id.* at 34 (citing *McCan* v. *First Nat'l Bank*, 139 F. Supp. 224, 227 (D. Or. 1954), aff'd, 229 F.2d 859 (9th Cir. 1956) (per curiam)). According to the Ninth Circuit, a state's exclusive probate jurisdiction "extends to all probate matters whether based on a theory of tax liability, debt, gift, bequest, tort, or any other theory that interferes with the probate of wills or the state court's ability to engage in the administration of estates." *Ibid.* Because the court of appeals deemed petitioner's claims to be "simply a disguised attack on J. Howard Marshall II's 1982 trust, as amended, and on the postmortem disposition of his property" provided therein, the court of appeals concluded that the exercise of federal jurisdiction would "interfere with the probate proceedings" and "assume general jurisdiction of the

probate," and accordingly it held that federal jurisdiction was lacking. *Id.* at 28 & n.12, 36-37 & n.15.

SUMMARY OF ARGUMENT

The court of appeals' expansive interpretation of the so-called "probate exception" to federal jurisdiction cannot be reconciled with longstanding precedent from this Court. It is well established that the pendency of a state probate proceeding is no bar to the exercise of concurrent federal jurisdiction over a suit to determine rights to the property at issue in that probate proceeding. See, *e.g.*, *Markham* v. *Allen*, 326 U.S. 490, 494-495 (1946). The only limitation on such jurisdiction is that the federal judgment cannot be enforced directly against the decedent's estate, but must either take its place in the probate proceedings or be enforced against someone else who is liable. See, *e.g.*, *Waterman* v. *Canal-Louisiana Bank & Trust Co.*, 215 U.S. 33, 44 (1909).

Moreover, the existence of such federal jurisdiction cannot be defeated by state law. Rather, federal jurisdiction is conferred by the Constitution and Congress, and "is not subject to limitations or restraint by state legislation establishing courts of probate and giving them jurisdiction over similar matters." *Waterman*, 215 U.S. at 43. The case upon which respondent relies, *Sutton* v. *English*, 246 U.S. 199 (1918), is not to the contrary. At most, that case stands for the narrow proposition that federal courts lack original jurisdiction over matters of "strict probate"—the probate of a will or the annulment of a probated will—but, even then, only if the State does not allow such a remedy by an independent suit. *Id.* at 205. The *Sutton* limitation does not apply here because petitioner's counterclaim seeks neither to probate a will nor to invalidate a probated will. Pet.

App. 28. There is no warrant for extending that will-specific rule beyond its narrow bounds to encompass inter vivos and other trusts.

In any event, whatever the scope of the "probate exception" with respect to litigation between private parties, it would be particularly inappropriate to apply such an exception to litigation involving the United States. Congress has expressly vested the federal courts with jurisdiction to resolve most disputes involving the United States, and the availability of that federal forum should not be frustrated by an expansive judicially-created exception.

ARGUMENT

A. The Pendency Of A State Probate Proceeding Does Not Deprive A Federal Court Of Jurisdiction To Adjudicate Rights To Property Of The Decedent's Estate

The Ninth Circuit's articulation of a sweeping, extratextual "probate exception" to federal jurisdiction cannot be squared with the constitutional and statutory provisions granting federal jurisdiction to the federal courts. As this Court observed long ago, "[j]urisdiction as to wills, and their probate as such, is neither included in nor excepted out of the grant of judicial power to the courts of the United States." *Ellis* v. *Davis*, 109 U.S. 485, 497 (1883). And nothing in this Court's cases interpreting the scope of that grant supports the broad exception adopted by the court of appeals.

1. It has long been established that, when a dispute is within the jurisdiction granted to federal courts by the Constitution and the Congress, federal courts have jurisdiction to decide that dispute, even if the dispute involves the rights to property in a decedent's estate that is the subject of a pending state probate proceeding.

See, *e.g.*, *Markham*, 326 U.S. at 494-495; *McClellan* v. *Carland*, 217 U.S. 268, 282 (1910); *Waterman*, 215 U.S. at 43, 45-46; *Byers* v. *McAuley*, 149 U.S. 608, 618, 620 (1893).

Applying that principle, this Court has found federal jurisdiction over disputes that would appear to fall within the Ninth Circuit's broadly worded exception to jurisdiction for all "probate related" matters. For example, it is well settled that federal courts can adjudicate claims for debts allegedly owed by a decedent's estate, notwithstanding that "the judgment may affect the administration or distribution in another forum of the assets of the decedent's estate." *Hess* v. *Reynolds*, 113 U.S. 73, 77 (1885). Likewise, "a distributee * * * may establish his right to a share in the estate" through an action in federal court. *Byers*, 149 U.S. at 620. Federal courts can also determine entitlement to a lien on a distributive share of a decedent's estate. See, *e.g.*, *Ingersoll* v. *Coram*, 211 U.S. 335, 358-360 (1908).

The only qualification on the authority of a federal court in such cases goes not to its jurisdiction to decide the rights to a decedent's property or to enter a judgment binding on the parties with respect to such rights, but rather to the means by which that judgment may be enforced. If in rem probate proceedings are pending in state probate court, the federal judgment cannot be enforced directly against the decedent's property in the possession of the state court, but "must take its place and share of the estate as administered by the probate court," or be enforced "against the administrator personally, or his sureties * * * or against any other parties subject to liability." *Waterman*, 215 U.S. at 44 (citations

omitted).[4] Given that long-established precedent, the Ninth Circuit's conclusion that there is a probate-related exception to federal jurisdiction with respect to all "claims either against or on behalf of the decedent's estate," Pet. App. 34, simply cannot be sustained.

2. The recognition of federal jurisdiction over such probate-related matters is consistent with fundamental principles that apply whenever federal courts have concurrent jurisdiction with state courts. As this Court has observed, "[g]enerally, as between state and federal courts, the rule is that 'the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction.'" *Colorado River Water Conservation Dist.* v. *United States*, 424 U.S. 800, 817 (1976) (quoting *McClellan*, 217 U.S. at 282). That rule "stems from the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." *Id.* at 817; *Hyde* v. *Stone*, 61 U.S. (20 How.) 170, 175 (1858) ("[T]he courts of the United States are bound to proceed to judgment, and to afford redress to suitors before them, in every case to which their jurisdiction extends.").

Accordingly, under general jurisdictional principles, "[w]here the judgment sought is strictly *in personam*, for the recovery of money or for an injunction compelling or restraining action by the defendant, both a state court and a federal court having concurrent jurisdiction

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[4] If the state court were to deny the effect of the federal judgment, that would "present[] a claim of Federal right which may be protected in this court." *Waterman*, 215 U.S. at 46; see *Parsons Steel, Inc.* v. *First Ala. Bank*, 474 U.S. 518, 525 (1986); see also *Chick Kam Choo* v. *Exxon Corp.*, 486 U.S. 140, 150-151 (1988) (holding that federal courts can enjoin pending state court proceedings to prevent relitigation of an issue previously presented to and decided by a federal court).

may proceed with the litigation, at least until judgment is obtained in one court which may be set up as *res adjudicata* in the other." *Penn Gen. Cas. Co.* v. *Pennsylvania ex rel. Schnader*, 294 U.S. 189, 195 (1935); see, *e.g.*, *Commonwealth Trust Co.* v. *Bradford*, 297 U.S. 613, 618-619 (1936) (holding that federal jurisdiction existed to determine rights to assets in mortgage pool trust being administered by state court). This Court's precedents reveal constant adherence to that principle in probate-related matters as well. See, *e.g.*, *Markham*, 326 U.S. at 494-495; *McClellan*, 217 U.S. at 282; *Waterman*, 215 U.S. at 43, 45-46. That is the rule that governs this case.[5]

B. State Law Cannot Constrict Federal Jurisdiction Over Probate-Related Matters

The Ninth Circuit compounded its error by concluding (Pet. App. 34-36) that state law determines the scope of federal jurisdiction over all probate-related matters. That conclusion cannot be squared with the Supremacy Clause or this Court's precedents.

1. This Court long ago held that the jurisdiction of the federal courts to decide disputes "cannot be impaired by the laws of the States, which prescribe the modes of redress in their courts, or which regulate the

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[5] Given its holding regarding jurisdiction, the Ninth Circuit did "not address [respondent's] arguments concerning claim and issue preclusion." Pet. App. 37; see *In re Marshall*, 271 B.R. 858, 862-867 (C.D. Cal. 2001) (rejecting respondent's argument that the Texas judgment precluded petitioner's bankruptcy counterclaim). But, as this Court emphasized just last Term, the existence of parallel state and federal proceedings generally does not result in the elimination of federal jurisdiction; rather, preclusion law serves to prevent conflicting outcomes. *Exxon Mobil Corp.* v. *Saudi Basic Indus. Corp.*, 125 S. Ct. 1517, 1527 (2005).

distribution of their judicial power." *Payne* v. *Hook*, 74 U.S. (7 Wall.) 425, 430 (1869) (citation omitted). The Court explained that, "[i]f this position could be maintained, an important part of the jurisdiction conferred on the Federal courts by the Constitution and laws of Congress, would be abrogated." *Id.* at 429. Thus, in *Payne*, the Court held that the federal court had diversity jurisdiction over the plaintiff's fraud claim against the administrator of her brother's estate, even though the state probate court had exclusive jurisdiction over such claims as a matter of state law. *Id.* at 429-433.

Likewise, in *Waterman*, in finding federal jurisdiction to determine the interest of an heir in an alleged lapsed legacy, the Court reaffirmed the "general rule" that "inasmuch as the jurisdiction of the courts of the United States is derived from the federal Constitution and statutes * * * the jurisdiction may be exercised, and is not subject to limitations or restraint by state legislation establishing courts of probate and giving them jurisdiction over similar matters." 215 U.S. at 43. The Court applied that general rule to debt claims in *Hess*, observing that although "[i]t may be convenient that all debts to be paid out of the assets of a deceased man's estate shall be established in the court to which the law of the domicile has confided the general administration of these assets," 113 U.S. at 77, the jurisdiction of the federal courts to decide the "controverted question of debt or no debt * * * cannot be defeated by State statutes enacted for the more convenient settlement of estates of decedents." *Ibid.*; accord, *e.g.*, *McClellan*, 217 U.S. at 282; *Green's Administratrix* v. *Creighton*, 64 U.S. (23 How.) 90, 107-108 (1860).

2. Respondent asserts (Br. in Opp. 18-19, 23-24) that the court of appeals' reliance on state law to override

federal jurisdictional statutes is consistent with this Court's decision in *Sutton* v. *English*, *supra*. In *Sutton*, the Court addressed the question of federal diversity jurisdiction to decide a bill in equity by heirs-in-law seeking, among other things, to annul the decedent's previously probated will. 246 U.S. at 200-204. Reasoning that "the general jurisdiction of a court of equity to set aside a will or the probate thereof" is "not within the ordinary equity jurisdiction of the federal courts," the Court concluded that federal courts lack jurisdiction "to annul a will or to set aside the probate" unless state law gives parties the right to bring "independent suits" to pursue such a remedy, rather than providing for that remedy as a "procedure merely incidental or ancillary to the probate." *Id.* at 205; accord *Farrell* v. *O'Brien*, 199 U.S. 89 (1905).

Contrary to respondent's assertion, *Sutton* provides no support for the court of appeals' sweeping pronouncement (Pet. App. 34) that a State can strip a federal court of otherwise proper jurisdiction over "all claims either against or on behalf of the decedent's estate" by placing the resolution of those disputes within the exclusive jurisdiction of state probate courts. Under the court of appeals' rule, the state court could arrogate to itself exclusive jurisdiction over claims extending well beyond the pure probate of a will to include "all probate matters whether based on a theory of tax liability, debt, gift, bequest, tort, or any other theory that interferes with the probate of wills." *Ibid.* As demonstrated above, that very notion was rejected in *Waterman*, 215 U.S. at 43, which is cited and relied upon by *Sutton*, 246 U.S. at 205.

At most, *Sutton* holds only that, absent the creation of a state right to an independent suit in law or equity, "matters of strict probate are not within the jurisdiction

of courts of the United States." 246 U.S. at 205. In other words a federal court cannot "probate a will," *Markham*, 326 U.S. at 494, or (absent an independent cause of action) set aside a state court's probate thereof, *Sutton*, 246 U.S. at 205. Although neither *Sutton* nor its forebears provide a ready explanation for that limitation, the lack of authority to probate a will in the first instance appears to flow, at least in part, from the notion that a will must be "probated" by a state authority to have any effect. *Farrell*, 199 U.S. at 110. As the Court explained in *Farrell*, "the requirement of probate is but a regulation to make a will effective," *ibid.*, and "no instrument can be effective as a will until proved, no rights in relation to it, capable of being contested between parties can arise until preliminary probate has first been made." *Id.* at 107 (quoting *Ellis* v. *Davis*, 109 U.S. 485, 497 (1883)).[6]

Once the state court has established a will through probate (as had occurred in *Sutton* and its forebears),[7] if state law requires all contests to that will to be

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[6] In addition, the Court observed that the proceeding to probate a will is often "*ex parte* and merely administrative," lacking the requisite controversy between parties to confer diversity jurisdiction. *Farrell*, 199 U.S. at 107 (quoting *Ellis*, 109 U.S. at 497). Thus, the requirement to probate could be analogized to an exhaustion requirement.

[7] See, *e.g.*, *Sutton*, 246 U.S. at 207 (noting that plaintiffs sought to have will annulled); Brief for Appellees at 49-51, *Sutton*, *supra* (No. 330) (orders of state probate court establishing wills); *Waterman*, 215 U.S. at 45-46 (noting that plaintiff "does not seek to set aside the probate of the will, which the bill alleges was duly established and admitted to probate in the proper court of the State"); *Farrell*, 199 U.S. at 101 (noting that federal claim "assailed the previous probate"); *Ellis*, 109 U.S. at 493 (noting that federal claim sought to have probated will declared "null and void"); *In re Broderick's Will*, 88 U.S. (21 Wall.) 503, 517 (1875) (noting probate proceeding had closed).

brought in the probate court itself or on appeal from that court, then allowing a subsequent federal suit to annul an already-probated will would directly interfere with the in rem state proceedings, see *Waterman*, 215 U.S. at 44 (explaining *Farrell*), and would, in effect, allow a collateral challenge to a state court ruling in federal district court. See *Exxon Mobil Corp.* v. *Saudi Basic Indus. Corp.*, 125 S. Ct. 1517, 1526 (2005); *District of Col. Ct. of Appeals* v. *Feldman*, 460 U.S. 462 (1983); *Rooker* v. *Fiduciary Trust Co.*, 263 U.S. 413 (1923). Thus, as *Sutton* held, unless state law provides for such a collateral challenge by way of an independent suit (which could then be brought in federal court), a contest to an established will must be brought in the state probate proceedings or on direct appeal therefrom. 246 U.S. at 207.

In any event, whatever the explanation, the limitation on federal jurisdiction discussed in *Sutton* is a very narrow one, applying only to "matters of pure probate, in the strict sense of the words." *Farrell*, 199 U.S. at 110; cf. *Ankenbrandt* v. *Richards*, 504 U.S. 689, 703 (1992) (concluding that "domestic relations" exception was a narrow one, applying only to the power "to issue divorce, alimony, and child custody decrees"). Here, the Ninth Circuit correctly concluded that petitioner's claim did not entail "the probate of a will, or any other purely probate matter." Pet. App. 28.[8] Accordingly, the *Sutton* analysis is inapplicable to this case.

Moreover, to the extent the *Sutton* analysis (and the *Markham* Court's reiteration of that analysis in dicta,

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[8] As the court of appeals explained, the district court did not decide "whether the last will and testament of J. Howard Marshall II should be admitted to probate," nor did it "supervise the administration of the estate of J. Howard Marshall II." Pet. App. 28.

326 U.S. at 494) relied upon premises regarding the jurisdictional limitations on the English Court of Chancery in 1789, there is good reason to reject extension of *Sutton* beyond the particular factual settings to which it has been applied. Courts and commentators have noted that those premises are of "dubious * * * historical pedigree." *Dragan* v. *Miller*, 679 F.2d 712, 713 (7th Cir. 1982); see Peter Nicolas, *Fighting the Probate Mafia: A Dissection of the Probate Exception to Federal Court Jurisdiction*, 74 S. Cal. L. Rev. 1479, 1501-1503, 1546 (2001) ("The validity of the historical gloss on the statutory grant of subject matter jurisdiction to the federal courts is dubious."); John F. Winkler, *The Probate Jurisdiction of the Federal Courts*, 14 Prob. L.J. 77, 120-126 (1997); Gregory C. Luke & Daniel J. Hoffheimer, *Federal Probate Jurisdiction: Examining the Exception to the Rule*, 39 Fed. B. News & J. 579, 581 (1992) (noting that the probate exception is "a legal fiction based on an artificial interpretation of the Judiciary Act of 17[89]").

Whatever the scope of the chancery court's historic jurisdiction in probate matters, moreover, there can be no dispute that matters pertaining to trusts were traditionally the province of the courts of equity. See, *e.g.*, *Clews* v. *Jamieson*, 182 U.S. 461, 479 (1901); 3 William Blackstone, *Commentaries* *439 ("The form of *trust*, or second use, gives the courts of equity an exclusive jurisdiction as to the subject-matter of all settlements and devises in that form, and of all the long terms created in the present complicated mode of conveyancing."); 1 John Norton Pomeroy, *A Treatise on Equity Jurisprudence as Administered in the United States of America* § 151, at 206 (5th ed. 1941) ("The whole [trust] system fell within the exclusive jurisdiction of chancery; the doc-

trine of trusts became and continues to be the most efficient instrument in the hands of a chancellor.").[9] Thus, the court of appeals clearly erred in suggesting (Pet. App. 29-30) that the district court's "invalidation of the 1982 trust" (*id.* at 30) falls outside the proper jurisdiction of a federal court.

In short, the principle that federal courts lack jurisdiction "to probate a will" should be construed narrowly so as to preserve to the federal courts the jurisdiction granted them by Congress. Even assuming that suits seeking to set aside a state court's probate of a will can properly be relegated to state probate court, there is no basis for extending the *Sutton* analysis beyond its original bounds—*i.e.*, the establishment of a will or the annulment of an already-probated will—to encompass other matters, such as the enforcement, interpretation, or validity of inter vivos trusts.

C. The Ninth Circuit's Decision Is Inconsistent With *Markham*

The Ninth Circuit's cramped view of federal jurisdiction stems from its misreading of this Court's decision in *Markham* v. *Allen*, *supra*. Here, as it did in *Markham* itself, see *Allen* v. *Markham*, 147 F.2d 136, 136-137 (1945), rev'd, 326 U.S. 490 (1946), the Ninth Circuit has adopted an excessively broad view of the types of federal suits that interfere with ongoing state probate proceedings. The court of appeals apparently read *Markham* as delineating three factors, any one of which would be sufficient to deprive a federal court of otherwise proper

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[9] See also Nicolas, *supra*, at 1513-1514 ("In eighteenth-century England, the entire system of trusts was within the exclusive jurisdiction of chancery, and chancery would thus never refuse to adjudicate matters relating to trusts.") (footnotes omitted).

jurisdiction, even over a claim seeking merely an adjudication of rights in a decedent's estate. See Pet. App. 27-28 (citing *Markham*). The court of appeals' understanding of Markham is incorrect.

1. *Markham* was a federal suit brought on behalf of the United States by the Alien Property Custodian (Custodian) against an executor and six of the decedent's heirs, all of whom were American residents. 326 U.S. at 491-492. The Custodian claimed that, by virtue of the Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, the rights of the decedent's German legatees (to whom the decedent's will purported to leave her estate) vested in the Custodian, and the resident heirs therefore had "no interest in the estate." 326 U.S. at 492; *Allen* v. *Markham*, 147 F.2d at 136.

At the time the Custodian filed the federal suit, the decedent's estate was in the course of probate administration in state court. See *Markham*, 326 U.S. at 492; *Allen*, 147 F.2d at 136. In state court, the resident heirs were seeking a determination of heirship, claiming that they were entitled under California law to inherit the decedent's estate in lieu of the German legatees. See *Markham*, 326 U.S. at 492. Given that "the matter [was] within probate jurisdiction and [the probate] court [was] in possession of the property," the Ninth Circuit in *Allen* v. *Markham* reasoned that the probate court's "right to proceed to determine heirship cannot be interfered with by the federal court." 147 F.2d at 137.

This Court reversed. See *Markham*, 326 U.S. at 493-495. The Custodian's suit fell within the terms of the statute granting original federal jurisdiction over suits brought by "an officer of the United States" who was authorized to sue, *id.* at 493 (quoting 28 U.S.C. 41(1) (1940)), and the Court rejected the notion that the fed-

eral courts were nevertheless without jurisdiction. The Court did so based on "a long series of decisions of this Court" establishing that "federal courts of equity have jurisdiction to entertain suits in favor of creditors, legatees and heirs and other claimants against a decedent's estate to establish their claims so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court." *Id.* at 494 (quotation marks and citations omitted).

Significantly, the Court made clear that federal court adjudication of claimants' rights to property in a decedent's estate does *not* constitute that kind of interference:

> [W]hile a federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court, it may exercise its jurisdiction to adjudicate rights in such property *where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court.*

Markham, 326 U.S. at 494 (citations omitted and emphasis added). That is so even if proceedings are currently pending in state probate court to determine entitlement to the very same property. *Id.* at 495. Applying that standard in *Markham*, the Court concluded that the federal district court had jurisdiction to enter a judgment entitling the Custodian "to receive the net estate of the [decedent] in distribution, after the payment of expenses of administration, debts, and taxes." *Ibid.*

To be sure, *Markham* reaffirmed the principle that a federal court may "not interfere with the probate pro-

ceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court." 326 U.S. at 494; cf. Pet. App. 27-28 (announcing three-pronged test derived from latter phrase). But whatever the precise scope of that limitation on federal jurisdiction, see pp. 21-23, *infra*, the district court's judgment in this case appears to fall well within the scope of federal jurisdiction preserved by *Markham*. Indeed, it is far from clear that the judgment even purports to allocate rights to property in the decedent's estate. See Pet. App. 147 (concluding that petitioner "is entitled to judgment against [respondent] on her counterclaim for tortious interference with an inter vivos gift," and awarding her a specified amount of damages). In fact, the claim could be viewed as being premised on her lack of rights to that property. See *id.* at 166-167 ("[Petitioner's] counterclaim is at least in part premised on the theory that she is entitled to nothing either from the living trusts or from the estate itself. Her theory is that [respondent] prevented J. Howard, Sr. from including her in the living trusts."). But even if petitioner's claim is properly viewed as asking the federal courts to adjudicate her rights (if any) to property in the exclusive custody of the state probate court, *Markham* makes clear that there is no bar to federal jurisdiction. 326 U.S. at 494.

2. Properly read, the passage in *Markham* suggesting that the federal courts lack jurisdiction to "interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court," 326 U.S. at 494, does not create or reflect the existence of a special, extra-textual "probate exception" to federal jurisdiction. Rather, that passage was an attempt to encapsulate more than a cen-

tury of decisions founded upon the general principle that, when one court is exercising in rem or quasi in rem jurisdiction over a res, a second court will not assume in rem or quasi in rem jurisdiction over the same res. See, *e.g.*, *Penn Gen. Cas. Co.*, 294 U.S. at 195-196; *Waterman*, 215 U.S. at 43, 45-46; *Byers*, 149 U.S. at 614-615. Those decisions reflect the application of general principles of jurisdiction, not special rules of federal jurisdiction for probate-related matters.

For example, in *Byers*, the Court rejected an assertion of federal jurisdiction to enter a judgment "dispos[ing] of and distribut[ing] the entire estate" of a decedent and held that the federal court lacked jurisdiction to order the sale of specific property within the decedent's estate. 149 U.S. at 612-613, 620. The Court explained that such an order would "interfere with the administration of an estate in a state court," as "[n]o officer appointed by any court should be placed under the stress which rested upon this administrator, and compelled for his own protection to seek orders from two courts in respect to the administration of the same estate." *Id.* at 613. As the Court explained, "as in all other cases of conflict between jurisdictions of independent and concurrent authority, that which has first acquired possession of the res which is the subject of the litigation is entitled to administer it." *Id.* at 617 (citing, *e.g.*, *Williams* v. *Benedict*, 49 U.S. (8 How.) 107 (1850)).

That principle reflects a notion of first-in-time, not of state-court priority, and in any event is narrow in its scope and effect. Significantly, the Court in *Byers* upheld federal jurisdiction, as between diverse parties, "to determine and award their shares in the estate." 149 U.S. at 620. The Court made clear that such a judgment does not "interfere" with the state proceedings in the

relevant sense, as long as the judgment is not enforced directly against the property of the decedent. *Ibid.*; see pp. 10-11, *supra*. At most, that is the type of claim at issue here.[10]

Accordingly, the court of appeals' creation of an expansive "probate exception" to federal jurisdiction prevents the federal judiciary from exercising the jurisdiction granted to it by the Constitution and Congress and cannot be squared with this Court's precedent. Here, it is undisputed that Title 28 confers federal jurisdiction over petitioner's counterclaim against respondent as a claim arising under Title 11, or arising in or related to a case under Title 11. 28 U.S.C. 157, 1334; Pet. App. 21, 36 n.14 (court of appeals); *id.* at 172-173 (district court); *id.* at 193, 196-198 (bankruptcy court). The Ninth Circuit's sweeping exception should be rejected.

D. A Broad Probate-Related Exception To Federal Jurisdiction Would Be Particularly Unwarranted To The Extent That Congress Has Granted The United States A Federal Forum

Regardless of the rule that the Court adopts with respect to probate-related litigation between private parties, it would be particularly inappropriate to create

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[10] *Princess Lida of Thurn & Taxis* v. *Thompson*, 305 U.S. 456 (1939), on which respondent relies (Br. in Opp. 13), is not to the contrary. In that case, the Court held that where an inter vivos trust was currently being administered by a state court in an in rem proceeding, a federal court could not subsequently take in rem jurisdiction to administer that same trust. 305 U.S. at 463-466. While concluding that the claims sought to be pressed in federal court in that case were "solely as to administration and restoration of corpus," the Court declared that "an action in the federal court to establish the validity or the amount of a claim constitutes no interference with a state court's possession or control of a res." *Id.* at 467.

a broad "probate exception" to federal jurisdiction in cases to which the United States is a party. As scholarly commentators have noted, federal jurisdiction to hear suits by and against the United States is "one of the traditional prerogatives of sovereignty." Erwin Chemerinsky & Larry Kramer, *Defining the Role of the Federal Courts*, 1990 B.Y.U. L. Rev. 67, 80. Congress has expressly exercised that prerogative by providing a federal forum, either through original or removal jurisdiction, for the resolution of most disputes involving the United States. See, *e.g.*, 28 U.S.C. 1340, 1345-1347, 1442, 1444, 2410. The availability of that federal forum should not be frustrated by a broad, judicially-created exception to federal jurisdiction that finds no support in the statutory text.

1. Not surprisingly, probate-related claims brought by and against the United States often involve disputes over federal tax liability. See notes 1-2, *supra*. Through specific grants of jurisdiction in Title 28, Congress has expressed a policy that the United States should generally be able to litigate such claims in federal court. For example, Section 1340 confers original jurisdiction over "any civil action arising under any Act of Congress providing for internal revenue," and Section 1346 confers original jurisdiction for suits against the United States for the recovery of taxes or penalties alleged to have been erroneously or illegally collected. See 28 U.S.C. 1340, 1346(a)(1). Section 1442 authorizes removal to federal court when the United States is sued in state court on account of any right, title, or authority claimed under any federal tax statute. See 28 U.S.C. 1442(a)(1). Under Section 1444, the United States may also remove to federal court any actions, such as quiet title claims, brought against it under Section 2410 with respect to

property on which the United States has a tax or other lien. See 28 U.S.C. 1444, 2410. And Section 1345 allows the United States as plaintiff to commence any "civil actions, suits or proceedings" in federal court. 28 U.S.C. 1345.

The tax context aptly demonstrates the importance of a federal forum for claims by and against the United States. Indeed, just last Term, this Court held that "the national interest in providing a federal forum for federal tax litigation [was] sufficiently substantial to support the exercise of federal question jurisdiction" in a quiet title action between private parties. *Grable & Sons Metal Prods., Inc.* v. *Darue Eng'g & Mfg.*, 125 S. Ct. 2363, 2365 (2005). That national interest is particularly weighty in the context of tax-related litigation to which the United States is a party, and it would be frustrated by the application of the court of appeals' probate-related exception to federal jurisdiction in such cases.

As this Court repeatedly has recognized, "[t]he Government has a strong interest in the 'prompt and certain collection of delinquent taxes.'" *Grable & Sons*, 125 S. Ct. at 2368 (quoting *United States* v. *Rodgers*, 461 U.S. 677, 709 (1983)).[11] As an initial matter, therefore, the United States has an interest in avoiding the procedural and substantive vagaries of 50 different state court systems as they might apply to probate-related federal tax litigation.

The availability of a federal forum is important to the United States without regard to whether the particular case turns on questions of federal or state law. It is self-

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[11] Accord *United States* v. *National Bank of Commerce*, 472 U.S. 713, 733 (1985); *Franchise Tax Bd.* v. *USPS*, 467 U.S. 512, 523 (1984); *G.M. Leasing Corp.* v. *United States*, 429 U.S. 338, 350 (1977); *Perez* v. *Ledesma*, 401 U.S. 82, 127 n.17 (1971).

evident that important questions of federal law "sensibly belong[] in a federal court," *Grable & Sons*, 125 S. Ct. at 2368, and federal judges may be more familiar than state probate judges with the governing law. See *ibid.* This Court also has recognized, however, the importance to the United States of a federal forum with respect to state law matters. As the Court explained in *Arizona* v. *Manypenny*, 451 U.S. 232 (1981), the purpose of removal jurisdiction in cases in which the United States or one of its officers is a party is to "permit[] a trial upon the merits of the state-law question free from local interests or prejudice." *Id.* at 242; accord *Maryland* v. *Soper*, 270 U.S. 9, 32 (1926). That consideration may have special force in the context of litigation relating to the collection of federal tax revenues, especially when state law determines whether property will stay in the local community or end up in the federal fisc.

2. Even if the Court were to recognize a "probate exception" to federal jurisdiction for purposes of litigation between private parties, the unique federal interest in preserving a federal forum for litigation involving the national government would preclude application of any such exception to cases in which the United States is a party. In related contexts, the Court has developed special rules for the United States in light of the national government's unique interests and roles, and the same result would be appropriate with respect to any "probate exception."

For example, the Court has construed the Anti-Injunction Act, 28 U.S.C. 2283, to incorporate an implicit exception for injunctions sought by the United States against state court proceedings. *NLRB* v. *Nash-Finch Co.*, 404 U.S. 138, 144-146 (1971); *Leiter Minerals, Inc.* v. *United States*, 352 U.S. 220, 224-226 (1957). In so

doing, the Court characterized the United States as having "superior federal interests." *Nash-Finch Co.*, 404 U.S. at 145; *Leiter Minerals*, 352 U.S. at 226. The Court observed that the policy behind the Anti-Injunction Act "is much more compelling when it is the litigation of private parties which threatens to draw the two judicial systems into conflict than when it is the United States which seeks a stay to prevent threatened irreparable injury to a national interest." *Leiter Minerals*, 352 U.S. at 225-226.

Special rules also exist for the United States in the tax context. For example, in *Commissioner* v. *Estate of Bosch*, 387 U.S. 456, 457 (1967), this Court considered "what effect must be given a state trial court decree where the matter decided there is determinative of federal estate tax consequences," and the United States was not a party to the proceeding. *Id.* at 462. The Court held that "where the federal estate tax liability turns upon the character of a property interest held and transferred by the decedent under state law, federal authorities are not bound by the determination made of such property interest by a state trial court." *Id.* at 457.

Accordingly, whatever rule is adopted with respect to private parties, the creation of a broad "probate exception" applicable to cases in which the United States is a party would be unwarranted. Such a rule would thwart Congress's intent to provide federal jurisdiction for claims by and against the United States. As the district court recognized in *In re Palmer's Will*, 11 F. Supp. 301 (E.D. Okla. 1935), in upholding its jurisdiction to hear a will contest that the United States had removed to federal court:

> [I]t was also the intention of Congress that when the United States government was brought in that it

> should have the privilege of having all essential adjudications made by removal in the national courts. To say that these statutes are to receive such construction that in cases involving succession through wills or inheritance, that as to probating of the wills and determination of heirship, * * * the state tribunals should have exclusive jurisdiction, in such matters, * * * does not appear to be in accord with the purpose or intention of the act.

Id. at 304. The district court's reasoning is as valid today as it was in 1935.

E. Even When Federal Jurisdiction Exists, Federal Courts May Have Discretion To Refrain From Exercising Jurisdiction

As this Court suggested in *Markham*, 326 U.S. at 495, there may be certain limited instances in which federal courts should refrain from exercising jurisdiction in probate-related matters. Whatever the limits of such discretion with respect to litigation between private parties, however, *Markham* makes clear that any such discretion would rarely be appropriate when the United States is a party. The Court stressed that the Trading with the Enemy Act's jurisdictional grant "plainly indicate[d] that Congress has adopted the policy of permitting the custodian to proceed in the district courts to enforce his rights under the Act, whether they depend on state or federal law." 326 U.S. at 496. The provisions of Title 28 granting original and removal jurisdiction over cases to which the United States is a party reflect a similar policy.[12]

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[12] To be sure, *Colorado River*, *supra*, involved a case to which the United States was a party and the Court concluded that the federal court should have refrained from exercising jurisdiction. But the

In this case, however, there is no need to consider whether and when district courts may have the discretion to abstain from exercising otherwise proper jurisdiction. In the provision granting jurisdiction over bankruptcy matters, Congress delineated precisely when bankruptcy courts may or must abstain from exercising the jurisdiction granted to determine state law claims. See 28 U.S.C. 1334(c)(1) and (2). Whatever the proper application of those provisions in this case,[13] the fact that Congress specifically considered the possibility of concurrent state proceedings, and their effect on the bankruptcy court's exercise of its jurisdiction, makes the creation of a further judicial exception to such jurisdiction even more unjustified.[14]

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principle of *Colorado River* applies only in "exceptional circumstances." *Moses H. Cone Mem'l Hosp.* v. *Mercury Constr. Corp.*, 460 U.S. 1, 14-15 (1983) (quoting *Colorado River*, 424 U.S. at 813). Moreover, as this Court made clear in *Moses H. Cone*, "[b]y far the most important factor" in *Colorado River* was that Congress had expressed a clear federal policy against piecemeal litigation of water rights. *Moses H. Cone*, 460 U.S. at 16. No comparable federal policy exists with respect to probate matters. Indeed, *Colorado River* dismissal would be especially inappropriate when the United States is seeking adjudication of federal tax liability: in *Moses H. Cone*, this Court stressed that "the presence of federal-law issues must always be a major consideration weighing against surrender" of federal jurisdiction. *Id.* at 26. See *United States* v. *Bank of New York & Trust Co.*, 296 U.S. 463 (1936).

[13] The district court (C.A. Supp. E.R. 8593-8599) and the bankruptcy court (Pet. App. 196) declined to abstain under these provisions, and the court of appeals did not address the issue.

[14] Respondent relies (*e.g.*, Br. in Opp. 21-22) upon *Harris* v. *Zion's Sav. Bank & Trust Co.*, 317 U.S. 447 (1943), for the proposition that the "probate exception" applies to federal bankruptcy jurisdiction, but *Harris* did not involve the application of a "probate exception" to otherwise applicable jurisdiction. Rather, it involved a statutory interpretation question as to the meaning of a provision in the

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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bankruptcy law. See *id.* at 449-453.